

REMARKS

Claims 1-9 and 14-38 are pending. Claims 10-13 were cancelled in the amendment filed January 7, 2008.

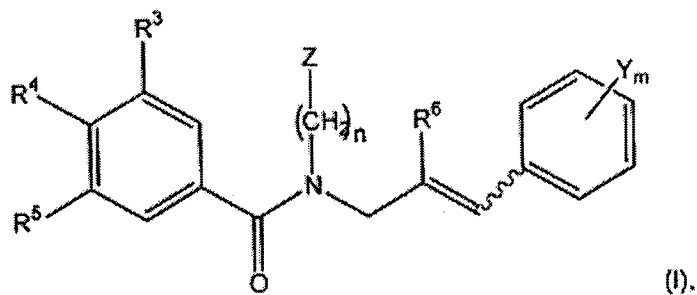
Applicants thank the examiner for withdrawing the prior rejection under 35 U.S.C. § 103.

Obviousness-type Double Patenting

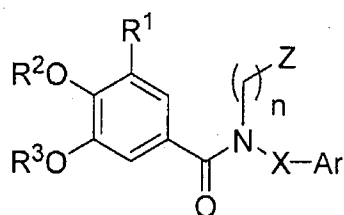
Claims 1-38 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of co-pending application 11/478,456. As this is a provisional rejection and as the '961 application has neither been examined nor allowed, Applicants request withdrawal of this rejection at this time (See MPEP § 804).

Claims 1-38 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of co-pending application 11/202,961. According to MPEP § 804, "nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s)."

The claims at issue are drawn to compounds of the formula:



The claims of the '961 application are drawn to compounds of the formula:



where X is a bond, CH₂ or CH(CH₃) and Ar is a bicyclic ring.

The claims in the present invention are neither anticipated nor obvious in view of the claims of the '961 application. The examiner asserts that the compounds in both applications are "structurally similar" and that "it would have been obvious to one skilled in the art to prepare the compounds as claimed in the present application containing a five member ring containing one nitrogen." The examiner focuses on the Z substituent. However, this is not the only structural difference between the claimed compounds.

The compounds of the present claims have several other structural differences from those in the '961 application including, at least, (1) the linker between the amide nitrogen and the aryl group is an olefin and (2) the aryl group is monocyclic. There is no evidence of record establishing that a skilled artisan would make one of these three structural changes, never mind all of them.

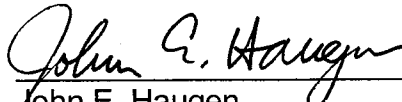
Applicants also respectfully note that this application was made of record in the '961 application – yet no obvious type double patenting rejection was made there. That is, the examiner of the '961 application did not find the compounds claimed therein obvious in view of the compounds presently claimed – presumably due to the differences noted above.

In view of all of these structural differences, applicants respectfully request that this rejection be withdrawn.

CONCLUSION

Applicants believe that claims 1-9 and 14-38 are now in condition for allowance. The Examiner is invited to contact the undersigned agent for the applicants via telephone if such communication would expedite this application.

Respectfully submitted,



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